

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

_____)	
CONSERVATION LAW FOUNDATION, INC.,)	
)	
)	
Plaintiff,)	
)	CIVIL ACTION NO. 05-10487-NG
v.)	
)	
MITT ROMNEY, in his Official Capacity as)	
GOVERNOR OF MASSACHUSETTS, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

JOINT MOTION TO DISMISS ACTION WITH PREJUDICE

Pursuant to Fed. R. Civ. P. 41(a)(2), all parties to the above-captioned action move to dismiss this case with prejudice. As grounds for their Joint Motion, the parties state:

1. The plaintiff, the named defendants, the Massachusetts Executive Office of Administration and Finance, and the Executive Office of Environmental Affairs executed a Settlement Agreement on November 28, 2006. The Settlement Agreement specifies that it “is an out-of-court nonjudicial contract among the contracting parties” and that it “shall neither constitute nor be construed as a consent order, consent decree, or other order of that Court.”

2. A central component of the Settlement Agreement is the adoption of certain regulations (a) by the Massachusetts Department of Environmental Protection (“MassDEP”) as revisions to the Commonwealth’s Air Pollution Control Regulations and, thereafter, (b) by the United States Environmental Protection Agency (“EPA”) as revisions to the Massachusetts State Implementation Plan under the Clean Air Act (“SIP”). Paragraph 3 of the Agreement provides for a stay of this litigation while the EPA’s review process runs its course,

and Paragraph 4 then calls for a dismissal of the case if EPA ultimately adopts the recommended changes: “The Parties agree to file a Joint Motion to Dismiss Litigation of Civil Action No. 05-10487 upon adoption by the United States Environmental Protection Agency of the regulation attached hereto as Attachment A [the specific SIP amendment that the parties contemplated] . . . as a revision to the State Implementation Plan.” Paragraph 4 further specifies that “[s]uch dismissal will be with prejudice.”

3. Consistent with the Settlement Agreement, the Court in fact stayed this action on December 5, 2006, acting on the parties’ Joint Motion to Stay Litigation. *See* Electronic Order of Dec. 5, 2006, granting Document No. 63.

4. On December 1, 2006, and after appropriate notice and comment in compliance with the Massachusetts Administrative Procedure Act, MassDEP in fact adopted the proposed regulation attached as Exhibit A to the Settlement Agreement as a revision to the Commonwealth’s Air Pollution Control Regulations. 360 C.M.R. § 7.36 (as amended through Dec. 1, 2006). On July 31, 2008, and again after appropriate notice and comment in compliance with the federal Administrative Procedure Act, EPA similarly issued a final approval of a SIP revision adopting the proposed regulation attached as Exhibit A to the Settlement Agreement as a component of the SIP. 73 Fed. Reg. 44,654 (July 31, 2008).

5. Now that EPA has in fact adopted the regulation contemplated in the Settlement Agreement as a SIP amendment, the parties jointly move that the Court dismiss the present action with prejudice, as provided for in Paragraph 4 of the Settlement Agreement.

For the foregoing reasons, the parties respectfully request that the Court allow their Joint Motion to Dismiss Action with Prejudice and in fact dismiss the present case with prejudice.

For the Plaintiff,

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